

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:20-CV-00102-KDB-DSC**

PHILLIPS LANDING OF STATESVILLE, LP,)

)

Plaintiff,)

)

V.)

ORDER

)

KEYBANK NATIONAL ASSOCIATION,)

)

Defendant.)

)

THIS MATTER is before the Court on Defendant’s Motion to Dismiss (“Motion”) (Doc. No. 6), the parties’ associated briefs and exhibits, (Doc. Nos. 6, 12, 13), and the Magistrate Judge’s Memorandum and Recommendation (“M&R”) (Doc. No. 14), recommending that the Motion be granted in part and denied in part. The parties have not filed an objection to the M&R, and the time for doing so has expired. Fed. R. Civ. P. 72(b)(2).

I. BACKGROUND

No party has objected to the Magistrate Judge’s statement of the factual and procedural background of this case. Therefore, the Court adopts the facts as set forth in the M&R. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985) (explaining the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge to which no objections have been raised).

II. STANDARD OF REVIEW

A district court may designate a magistrate judge to “submit to a judge of the court proposed findings of fact and recommendations for the disposition” of dispositive pretrial matters, including motions to dismiss. 28 U.S.C. § 636(b)(1). Any party may object to the magistrate judge's proposed findings and recommendations, and the court “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). However, “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation” and need not give any explanation for adopting the M&R. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983). Also, the Court does not perform a *de novo* review where a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). After reviewing the record, the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

III. DISCUSSION

Having carefully reviewed the Magistrate Judge's M&R, the relevant portions of the record and applicable legal authority, this Court is satisfied that there is no clear error as to the M&R, to which no objection was made. *Diamond*, 416 F.3d at 315. Accordingly, this Court finds that it should adopt the findings and recommendations set forth in the M&R as its own

solely for the purpose of deciding this Motion and that Defendant's Motion should be granted in part and denied in part as discussed in the M&R.

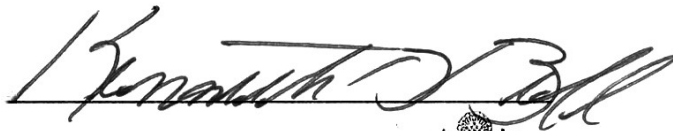
IV. CONCLUSION

IT IS, THEREFORE, ORDERED that:

1. The Magistrate Judge's M&R, (Doc. No.14), is **ADOPTED**; and
2. Defendant's Motion, (Doc. No. 6), is **GRANTED IN PART** and **DENIED IN PART**.

SO ORDERED.

Signed: December 8, 2020

A handwritten signature in black ink, appearing to read 'Kenneth D. Bell', written over a horizontal line.

Kenneth D. Bell
United States District Judge



Signed: December 8, 2020